

URBAN/MUNICIPAL

CA2 ONEV 740

87052

Ontario Environmental
Assessment Advisory
Committee Report No. 25
to the Minister
Hamilton Waterfront
Development Project

ONTARIO ENVIRONMENTAL ASSESSMENT ADVISORY COMMITTEE

REPORT NO. 25 TO THE MINISTER

HAMILTON WATERFRONT DEVELOPMENT PROJECT

Report on the request by the City of Hamilton for exemption from the Environmental Assessment Act of the proposed Hamilton Waterfront Development Project.

April 1, 1987

Dr. Philip Byer, Chairman
Dr. Robert Gibson, Member
Ms. Christine Lucyk, Member

URBAN M... ..

MAR 1987

GOVERNMENT DOCUMENTS

SUMMARY OF REFERRAL

DATE OF REFERRAL: February 18, 1987

DATE OF REPORT: April 1, 1987

SUBJECT OF REFERRAL: Request by the Corporation of the City of Hamilton for exemption of the Hamilton Waterfront Development Project from the Environmental Assessment Act.

TYPE OF REFERRAL: Open Review - Category A

SUMMARY OF DISCUSSION: The proposed undertaking involves potentially significant environmental impacts. It is a sizable project in an area of international concern, and despite an open planning process unresolved environmental issues remain. Comprehensive public review of these issues and possible mitigation measures are not assured through other required approvals. Implementation of the undertaking is not urgent. Since the proponent has already done considerable public planning, little additional delay should result from fulfilling the requirements of the Environmental Assessment Act.

RECOMMENDATION: The Environmental Assessment Advisory Committee recommends that the Hamilton Waterfront Development Project proposed by the City of Hamilton not be exempt from the Environmental Assessment Act.

TABLE OF CONTENTS

1.	Nature of the Referral	Page 1
2.	Environmental Assessment Status	1
3.	Nature of the Undertaking	2
4.	Planning and Approval Processes	4
5.	Summary of Submissions	8
6.	Discussion	16
7.	Recommendation	22

Appendices

- A. Map of Project Area
- B. List of Those Making Submissions

1. Nature of the Referral

On February 18, 1987 the Honourable Jim Bradley, Minister of the Environment, asked the **Environmental Assessment Advisory Committee** to provide its advice with respect to the request by the City of Hamilton for exemption from the Environmental Assessment Act of the proposed Hamilton Waterfront Development Project.

The Minister requested that the Committee conduct an Open (Category A) Review, with notice to the public. The Committee notified the City and relevant members of its staff, members of the Hamilton Waterfront Park Advisory Sub-committee, groups and individuals from the neighbouring area, other groups or individuals that could be affected by development of the Hamilton Waterfront, Provincial Environmental Groups, and the local media. A complete list of those notified of the referral and public meeting is available at the offices of the Environmental Assessment Advisory Committee.

The Committee held a meeting in Hamilton to receive submissions from the City and the public on the evening of Tuesday, March 24, 1987. The Committee also toured the waterfront site on that date.

2. Environmental Assessment Status

The proposed waterfront development is a municipal undertaking with an estimated cost of approximately \$42 million and, as such, is subject to the requirements of the Environmental Assessment Act unless exempted by Order in Council.

Section 3(a) of the Act provides that the Act applies to enterprises, activities, proposals and plans or programs in respect of enterprises or activities by a municipality. Section 29 of the Act provides that the Minister of the Environment may, by order, exempt an undertaking from the application of the Act where he is of the opinion that such an exemption is in the public interest after weighing the purpose of the Act against any injury, damage or interference that might be caused by its application. It is pursuant to this section that the City of Hamilton has requested an exemption for the proposed project.

3. Nature of the Undertaking

The proposed development, described in the Hamilton Waterfront Master Plan (September 1985), involves the construction and operation of a park and recreational area in the central part of the Hamilton waterfront. The Master Plan consists of a physical plan involving changes to existing landforms on the waterfront and extensive development of recreational facilities, an activities and programs plan for civic, cultural and recreational activities, and a strategy for improving transportation connections between the city and the waterfront. The estimated cost of implementing the Plan is 41.6 million dollars. As indicated in Appendix A, a map of the proposed development, the proposal is divided into areas:

Hamilton Island (Area A) An island is to be created from existing landfill property, known as the Lax Property, which was expropriated by the City in 1984. A bridge will connect the proposed island to the mainland. A waterfront plaza, with activities such as a farmer's market, antique shows, and boat shows, is to be located at the mainland side of this bridge. The island is to contain an enclosed artificial pond, a building to house a large botanical display, an "Imax/Omnimax" theatre, an amphitheatre with a floating stage, and a number of other year round recreational structures and amenities.

The proposed artificial pond is to be developed from an open bay now present at the property. It is proposed that the pond would include a separate, chlorinated area for safe swimming and an area for pedal boating and fishing. The pond would be filled from the municipal water supply.

The proposal also calls for the establishment of a waste disposal site on the south side of Hamilton Island in order to dispose of dredgeate material extracted from the creation of the proposed artificial pond and from the expansion of **Macassa Cove** (See below). It is proposed that an engineered holding facility be built on the site for the dredgeate. Water would flow through the holding pond and into a settling pond, to remove suspended solids, and, finally, into the harbour.

The Hamilton Island site was formerly a landfill which received industrial wastes. The site must be cleaned up before development can proceed. A study undertaken by the proponent indicates that industrial waste materials, such as flue dust, have been deposited throughout the site. The proponent, in conjunction with the Hamilton Regional Office of the Ministry of Environment, has begun to remove contaminated soil from the site. The City has contracted with a licensed waste disposal company, to remove and dispose of the industrial wastes. This clean-up operation is exempted from the Environmental Assessment Act by clause 5(3)(a) of Regulation 293, as amended, which exempts municipal undertakings with an estimated cost of \$3.3 million.

Dundurn Walk (Area B) The physical plan also calls for the construction of a waterfront boardwalk which connects Hamilton Island to Dundurn Castle, a nearby historical building, and then proceeds into a water inlet called Cootes Paradise. It is proposed that a section of this walkway, situated opposite Hamilton Island, would be a floating boardwalk set offshore to prevent access to the CN Rail tracks which this section of the walk would border. A pedestrian bridge would be built over the CN Rail tracks in order to connect Dundurn Castle to the boardwalk.

Macassa Cove (Area C) It is proposed that this existing marina area be enlarged and altered by the construction of the following: a number of finger piers running out into Macassa Cove to accommodate an enlarged marina; a boardwalk running along the water's edge between Hamilton Island and the proposed Pier 4; development areas for present and future marine uses; gas pump and marina stores; and a central, publicly-accessible pier.

Pier Four (Area D) This area is located immediately to the north of the Macassa Cove area and extends northward to the boundary of Hamilton Harbour Commission properties. It is proposed that this area's existing use as a passive park be maintained. A high berm is proposed for the side of the property which is adjacent to Macassa Cove, to serve both as a lookout point and a buffer for activities in the cove.

City Connections (Area F) The project would involve the upgrading of major roads which connect the city to the waterfront, including tree planting, changes in lighting, road widening and traffic redirection.

Waterfront Drive and Parking The project also involves construction of a two-lane waterfront drive and the provision of parking facilities at various locations throughout the development. The waterfront drive would be located at the base of the bluffs behind the waterfront development areas of Macassa Cove and would extend through the Pier Four area. It would connect the main waterfront parking areas and provide access to all of the uses and activities in the zone between the island and Pier Four. Three parking areas are to be located in Area A with a total capacity of approximately 580 parking spaces. Two lots with a combined capacity of approximately 140 cars are planned for Area C. - The Pier 4 area (Area D) is to have one lot with a capacity of about 75 cars.

Activities Program The Master Plan also describes a number of activities and programs to be held in the areas described above.

4. Planning and Approval Processes

a) Planning

On February 14, 1984, Hamilton City Council established a Waterfront Parks Advisory Sub-committee which was charged with the task of overseeing the preparation of a master development plan for the City's waterfront. This sub-committee included citizens from the community at large and from the immediate waterfront neighbourhood, technical staff including representatives from the City, the Hamilton Regional Conservation Authority, the Hamilton Harbour Commission and the Local Architectural Conservation and Advisory Committee. The sub-committee developed terms of reference, and a consulting firm was selected to develop the plan.

The consultants, working with the waterfront committee, produced three "alternative scenarios" for the development of the waterfront, as described in Hamilton Waterfront Study: Alternative Plan Scenarios (July 1985). A final "concept design" was chosen from these alternatives and, based on this design, the Hamilton Waterfront Master Plan (September, 1985) was produced. The Master Plan received the Hamilton City Council endorsement on October 29, 1985. In April 1986, City Council adopted a recommendation which deleted the parts of this Master Plan relating to the development of the Harbour Commission property. On July 30, 1986, the City submitted a request to the Minister of the Environment that this revised Hamilton Waterfront Development Project be exempt from the Environmental Assessment Act. This request was accompanied by an Application for Exemption prepared by Booth Aquatic Research Group Inc.

The City has provided the following opportunities for public involvement during the planning process:

- a four-day public workshop in April, 1985 to discuss ideas for waterfront development with various interest and community groups and individuals;
- a second workshop in July, 1985, in which the consultant presented the three alternatives and answered questions on these alternatives;
- a public meeting at Hamilton City Hall in July, 1985 which was televised by a local cable TV network and included an opportunity for viewer comments and questions to staff and the consultants;
- presentation of the Waterfront Master Plan in September, 1985 at a public meeting of the City's Parks and Recreation Committee;
- various presentations of the Plan at local schools, including a meeting of the Canadian Institute of Planners, and before local community groups and organizations.

The City listed the following future opportunities for public involvement in its application for exemption:

- a public meeting of the City's Planning and Development Committee regarding traffic plans;
- a public meeting of the City's Transportation and Environment Committee regarding traffic plans;
- a public meeting of the City's newly established Implementation Committee; and
- ongoing public meetings of the City's Parks and Recreation Committee.

The proponent has also undergone an informal government pre-consultation process. Copies of the Waterfront Master Plan were circulated to Environmental Assessment reviewers in various government departments and agencies. The consultants met with some of these agencies to discuss concerns and alternative ways of mitigating these concerns. The responses of these agencies to the Master Plan are summarized in Appendix 2 of the City's Application for Exemption. Following submission of the application the Environmental Assessment Branch distributed copies of this document to these same agencies for further comment. These responses are on file at the Environmental Assessment Branch.

Based on comments received by agencies which reviewed the Waterfront Master Plan, the proponent conducted impact studies in the following areas:

- industrial wastes on Hamilton Island;
- dredging and dredgeate disposal;
- impact of noise and noise regulations;
- the artificial lake;
- neighbourhood impacts;
- effects on existing community services; and
- economic impacts.

b) Approvals

The proposal will be subject to a number of statutory approvals and review processes regardless of whether or not it is exempted from the Environmental Assessment Act.

Environmental Protection Act Prior to developing the Hamilton Island site, the City must obtain the approval of the Minister pursuant to Section 45 of the EPA. This section requires approval before any use can be made of a site upon which waste has been deposited within the past 25 years. The proponent must also obtain certificates of approval pursuant to Section 27 of the EPA since the proposal involves the establishment of both a waste management system during dredging operations and a waste disposal site to receive the dredged spoils.

A public hearing may be required pursuant to Section 30 of the Act before a certificate of approval can be issued, depending on the nature and quantity of the wastes to be disposed of. The Director may also elect to hold a public hearing pursuant to Section 32 of the Act.

Lakes and Rivers Improvement Act Approval is required from the Ministry of Natural Resources under this Act for proposed alterations affecting Hamilton Harbour.

Ontario Water Resources Act A permit is required under Section 20 of the OWRA in order to take water during hydraulic dredging projects. An approval is also required under Section 24 for industrial sewage works related to the proposed dredging.

Navigable Waters Act (Federal) A permit must be obtained from the Federal Department of Transport for dredging operations.

Hamilton Region Conservation Authority A permit must be obtained from the Conservation Authority for cut and fill operations.

Planning Approvals Before the proposed Waterfront Master Plan can be implemented, zoning changes for the subject lands are required. This process involves passage of a new zoning by-law by City Council and an opportunity to appeal Council's decision to the Ontario Municipal Board.

Currently, the subject lands are zoned in a holding category called "Planned Development-Waterfront Recreational". Before these lands can be developed, this zoning must be removed and the lands must be rezoned for development. City Council has established a special "Waterfront Recreational" zoning category through passage of a general waterfront by-law. This by-law has been appealed to the Ontario Municipal Board by the Hamilton Harbour Commission. However, the appeal has been deferred until ongoing negotiations between the City and the Harbour Commission on a "comprehensive Harbour amendment" to the Official Plan are completed. If these negotiations are successful, the Harbour Commission may withdraw its appeal and the by-law would come into force. However, a subsequent by-law would be required in order to apply this new zoning category to the subject lands. This would provide a second opportunity for members of the public to bring planning issues related to the proposed development before the OMB. It is the City's position that an amendment to the Official Plan is not required. However, if an Official Plan amendment is required, the process for obtaining this amendment would include an opportunity for an OMB Hearing.

The City has also been developing a draft North End Waterfront Secondary Plan which encompasses the area of the proposed development. It is the intention of the City to finalize this Plan after the Waterfront Development planning issues are resolved.

5. Summary of Submissions

The following summary is based on both written submissions and oral presentations made at the public meeting in Hamilton on March 24. Appendix B provides a listing of all those who made submissions. The issues addressed in the submissions are broken down into four categories: biophysical impacts, socio-economic impacts, planning process concerns, and other concerns.

a) Biophysical Impacts

Three main areas of concern were identified with respect to biophysical impacts:

- . industrial waste on Hamilton Island;
- . dredgeate removal and disposal operations during construction; and
- . impacts associated with the creation of islands to enclose the artificial pond.

Industrial Waste on Hamilton Island The proponent submitted that concerns respecting the existence of industrial wastes on Hamilton Island would be adequately addressed by the proposed clean-up and monitoring program undertaken by the City in co-operation with the Ministry of the Environment. They further submitted that the 1985 study, "Environmental Management of Industrial Wastes on Hamilton Island", undertaken by the City's consultants, indicated that very low levels of contaminants associated with industrial wastes are leaching into the Harbour from the Hamilton Island area.

Other respondents submitted that:

- . the potential dangers associated with creating a public park on a former landfill site containing industrial wastes suggests a need for further study;
- . the proponent's study of the landfill site was inadequate because it relied largely on earlier studies and did not use a grid pattern technique for its bore-hole testing, and this grid technique is necessary given that dumping on the site was haphazard and unmonitored;
- . there is a need for ongoing groundwater monitoring on the site;
- . clean-up of undetected problems after the development is completed would be costly and must be avoided; and
- . the application of the Environmental Assessment Act would ensure that these dangers are reviewed in a public forum and would maximize the opportunity to put environmental safeguards in place.

Dredging and Dredgeate Disposal The proponent submitted that the impacts associated with the proposed dredging at Hamilton Island and Macassa Cove could be mitigated by the use of a silt curtain to minimize turbidity and by on-site containment facilities. It further submitted that the precautions proposed for the Hamilton Waterfront dredging operation are more stringent than those produced by the Environmental Assessment process for the Keating Channel in Toronto. A representative of MOE Hamilton Regional Office stated that they believe that the dredgeate to be extracted during the proposed dredging operation will not be "hazardous" as defined by Ministry criteria.

Other respondents including representatives of CELA and Pollution Probe, made the following submissions on the proposed dredging operation:

- . Further study is required before dredging can proceed given the poor quality of sediment in Hamilton Harbour and high levels of heavy metals and PCBs which are likely to be contained in dredgeate extracted from the Harbour.
- . Alternatives to the dredging operation, and alternative dredging techniques should be considered before the the operation proceeds in order to minimize impacts to public health and the aquatic eco-system.
- . Citizen involvement in the assessment of environmental assessmantal of dredging in Toronto Harbour yielded many benefits including improvements and cost savings in the dredging process.

Lake Fill The proponent submitted that the lake fill required to create the islands will not have a negative effect on the assimilative capacity of the harbour since total dredging for the project is greater than total filling. The CELA representative submitted that any creation of new lands in water has a variety of impacts on water quality, aquatic habitat, dispersion of nearby point-source discharges and on-water currents which must be carefully studied before any filling can proceed. Several respondants were concerned about the quality of fill to be used for the creation of the islands. It was noted that there are no approvals in place to ensure that only clean fill is used.

Other Biophysical Concerns These include:

- air pollution effects on the neighbourhood from the exhaust of automobiles in the park;
- the existence of a large sewer outlet at a non-flowing cove area near the proposed park which contains raw sewage during storm conditions;
- the effect of the creation of Hamilton Island on water circulation in this cove area;
- the proximity of the proposed site to an area where leaking railway cars are shunted to vent chemical fumes;
- possible impacts of the proposed Dundurn Walk on the natural flora and fauna of the Desjardins Canal and Cootes Paradise; and
- possible chlorine leakage from the proposed swimming lagoon which may affect flora and fauna at the western end of the harbour.

b) Socio-Economic Impacts

The Committee received a number of submissions concerning socio-economic impacts and in particular the effect of the proposed development upon the local community. Two main issues were identified:

- the impact of increased noise in the community; and
- traffic impacts from the creation of a waterfront drive and 800 parking spaces in the area.

A consultant for the City submitted that, in general, the local neighbourhood would prefer a development with less intensity than the one proposed, while the larger regional community is supportive of a more intensive proposed development since it allows greater access to and use of the waterfront. The proponent also submitted that the development would have some negative impacts on local residents including loss of privacy, increased noise in the area and increased traffic, but that these concerns could be mitigated in part and are outweighed by other benefits.

Noise Impact The proponent stated that an increase in noise levels is one of the most serious impacts of the development. In the short-term noise levels would increase due to construction but existing City by-laws limit the construction to 7 a.m. - 11 p.m. In the long-term some residents would be subjected to higher noise levels because of increased traffic in the area, and special events to be held at the site, such as fireworks displays and performances at the proposed amphitheatre. The proponent submitted that noise impacts from special events would be controlled by local by-laws and that proper landscaping could mitigate their effect.

Traffic The City noted that the proposed waterfront drive has been a major source of concern among local residents. However they argued that this drive is the best alternative for a project of this size and intensity since it would:

- . unify the waterfront area;
- . divert traffic away from the neighbourhood;
- . provide better access to the waterfront; and
- . serve the various parking lots on the site.

Other respondents submitted that the proposed drive is not necessary or desirable because:

- . it is not consistent with the with the Draft North End Waterfront Secondary Plan;
- . it fails to consider the larger traffic issues raised during the development of that plan;
- . it would have an adverse effect on the existing passive park area (Pier 4 Park) since it will split this area into two parts;
- . it would create traffic problems at the north end of the neighbourhood and bring more traffic through the neighbourhood thereby increasing noise, smells and other disturbances;
- . the combined effect of the drive and the eight hundred additional parking spaces will bring too much traffic into a small area; and
- . the proponent has not given adequate consideration to alternatives to the waterfront drive

c) Planning Process Concerns

The proponent submitted that a full Environmental Assessment of the Hamilton waterfront development is not necessary for the following reasons:

- . there has been an extensive public consultation process throughout the development of the proposal;
- . the proponent in its Application for Exemption addressed a set of screening criteria recommended by EA Branch, aimed at determining the environmental significance of the undertaking and concluded that the net environmental impacts of the proposed development is positive since it will
 - improve natural physical and biological aspects of the site,
 - improve the economy of the area,
 - enhance the process of revitalization of the local neighbourhood;
- . there are few outstanding issues with regard to environmental impact and these can be addressed through the existing approvals process; and
- . the remaining points of controversy are largely questions of judgement such as the level of intensity of the development and whether or not there should be a waterfront drive. These issues will continue to be discussed but the environmental assessment process would not advance or assist this discussion.

The City argued that it will lose time, money and momentum if it is required to submit an Environmental Assessment and that an Environmental Assessment would require the City to review alternatives that have already been considered and "waste a very creative year". A representative of the City stated that if exemption is granted it would hope to begin construction on the project in early 1988.

The proponent submitted that its decision to proceed with a Section 29 exemption application as opposed to a full environmental assessment was due in part to advice received from the Environmental Assessment Branch at an early stage in the planning process.

Other respondents submitted that the environmental assessment process is required in this case because:

- . it would ensure that the proponent considers alternative proposals of varying intensity as well as alternative means to address environmental concerns such as removal, treatment, and disposal of dredgeate
- . it would provide for meaningful public input into vital decisions,
- . it would ensure that detailed impartial data are produced on ecological impacts of the project as well as alternatives available to mitigate environmental impacts.

Several submissions raised concerns about the City's ability to address environmental concerns given its recent handling of another park project.

It was also submitted that more effort must be made to co-ordinate the proposed development with the current Remedial Action Plan (RAP) for the Hamilton Harbour, given that one of the goals of the RAP is to utilize an eco-system approach -- to develop a plan to manage Hamilton Harbour as an aquatic system. A representative from the Hamilton Harbour RAP Committee submitted that while the proposed development fulfills many of the needs of the RAP, greater co-ordination with the RAP program would be beneficial. Given that Hamilton Harbour has been identified by the International Joint Commission as an international area of concern, it was submitted that greater public scrutiny is justified. It was further argued that the proposal would set the pattern for other Harbour rehabilitation schemes and that therefore extra care must be taken to ensure full and comprehensive review.

A number of local respondents were concerned that the proposal is not consistent with the Draft North End Waterfront Secondary Plan. They argued that this Secondary Plan proposes a Perimeter Road which must be co-ordinated with the proposed Waterfront Drive and other traffic considerations of the Development Project.

One respondent submitted that the seeking of an exemption for this undertaking, which clearly has potential significant environmental impacts, reflects a general pattern of avoidance of environmental assessment legislation. It was argued that if the energies currently being directed at avoiding the Environmental Assessment Act were directed toward creating an environmental assessment document, proponents could save time and energy and at the same time ensure that environmental safeguards are in place. It was further argued that by utilizing the Consolidated Hearings Act environmental assessment concerns, planning and zoning changes and other environmental approvals could be addressed in one step.

d) Other Concerns

Two other concerns were identified by respondents. The Hamilton Harbour Commission submitted that part of the proposed development is on water lots owned by the Commissioners and that the City and the Commissioners have not yet met to resolve this issue. In its submission, the Harbour Commission stated that they were not opposed in principle to exemption and suggested that approval of the exemption application be delayed for six weeks in order to provide an opportunity for the Commissioners and the City to meet and resolve their differences. A submission from the Head-of-the-Lake Historical Society identified several cultural and historical features of the development area including a former Fur Trading Post.

6. Discussion

The proposed Hamilton Waterfront Development Project, with an estimated cost of approximately \$42 million, involves the development of a waterfront park and recreational area on a former industrial landfill property and adjacent lands.

As a municipal undertaking, costing more than \$3.3 million, this project is subject to the requirements of the Environmental Assessment Act. The proponent, the City of Hamilton, has sought an exemption under Section 29 of the Act. The advice of the Committee has been sought on this request for exemption.

The proponent has stated that the Environmental Assessment Branch was consulted at an early stage, to obtain advice on the best way to proceed under the EA Act. In an oral submission to the Committee, the City's representatives stated that during this preliminary consultation with the Branch, it was encouraged to request a Section 29 Exemption.

The Committee is greatly concerned that the City has focussed its efforts on obtaining on a Section 29 exemption from the beginning rather than proceeding by way of the full environmental assessment process. It should have been clear from an early stage in the planning process that development of the Hamilton Waterfront is a major undertaking that would involve potentially significant environmental impacts and that the requirements of the Environmental Assessment Act were appropriate. The intent of the Act is to subject undertakings to sound and comprehensive environmental planning and review as a matter of course. If the City had focussed on the requirements of the Act when they identified an opportunity to develop this waterfront area, an environmental assessment document which meets the Act's requirements could have been produced with little if any additional time and expense.

Despite the fact that the Committee believes that full compliance with the requirements of the Environmental Assessment Act from the beginning of this process would have served all parties more effectively, the question it must now address is whether or not an exemption under Section 29 is appropriate at this time. Section 29 states that the Minister may grant an exemption where he:

is of the opinion that it is in the public interest having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act.

The Minister must therefore weigh the environmental safeguards provided by full application of the Act, and the risks involved in proceeding without those safeguards in place against the potential "injury, damage or interference" that might be caused by any delays associated with compliance with the full environmental assessment process. Thus, in assessing the applicability of Section 29 in this case the Committee had regard to four main criteria:

1. the environmental significance of the proposed project
2. the adequacy of other existing statutory approvals as a means addressing all potential significant environmental concerns
3. the adequacy of public involvement in the planning and approvals process
4. the urgency of the proposed development project and the effect of any delays caused by application of the Act

Each of these is discussed below.

Environmental Significance

The studies and submissions which were presented to the Committee in this matter indicate that the proposed development could have a number of significant environmental impacts including:

- . biophysical impacts arising from
 - construction of a public park and recreational facility on a former landfill site which has received toxic industrial wastes,
 - dredging operations involving removal of potentially contaminated sediments and an on-site waste treatment and disposal facility,
 - changes in current flows and assimilative capacity in the Harbour arising from the creation of new islands, and
 - the construction and use of the artificial pond;

- . socio-economic impacts on the existing community, arising from
 - the public use of the proposed waterfront park
 - the creation of a waterfront drive and 800 parking spaces

Local residents identified a number of potential socio-economic impacts including loss of privacy, as well as an increase in traffic flow, noise and other disturbances.

In addition, the development is situated on a water body which is of international environmental concern, and which is currently the subject of a remedial action program involving all levels of government as well as a number of agencies and interested parties.

These and other concerns, detailed in the submissions section of this report clearly indicate that the proposed development involves environmentally significant concerns.

Adequacy of Existing Approvals

Section 4 of this report outlines the various statutory approvals required before the development can proceed. While these approvals address a number of biophysical and socio-economic concerns, they fail to meet two essential needs which would otherwise be addressed by full application of the Act.

First, these approvals fail to address interrelated biophysical issues in a comprehensive manner. Instead, approvals required under the Environmental Protection Act (EPA), Ontario Water Resources Act (OWRA), Lakes and Rivers Improvement Act and other legislation are narrow in scope, since they address only specific issues. For example, the City will require an approval under the OWRA in order to take water during dredging, and to treat dredgeate material before disposal. In addition it will require approval under Section 27 of the Act for disposal of this dredgeate material at a proposed landfill site in the development area. However, there is no process in place to evaluate the City's proposed dredging and dredgeate operation as a whole, and to review alternatives to selected methods. The

Committee received a submission from a participant in the environmental assessment process for dredging in Toronto's Keating Channel. This submission outlined the benefits of general application of the EA Act to dredging operations. A second example of the limited scope of existing approvals for biophysical issues is the absence of an approval for the proposed creation of a series of islands near the Hamilton Island Area. While a Hamilton Regional Conservation Authority permit is required for the use of fill during the creation of these islands, this permit does not regulate the quality of fill used. Moreover, there is no process to review possible environmental impacts of these new islands, such as the impacts of changes in water current on the surrounding area.

Second, the approvals process does not provide the opportunity for a public hearing to address potentially significant environmental concerns. For example, there is no opportunity for a public hearing to discuss the dangers associated with developing a public recreational area on a former landfill site. Further, there is no requirement that the proposed dredgeate removal, treatment and disposal operation be dealt with in a comprehensive public hearing. While Section 24 of the Ontario Water Resources Act offers the possibility of a public hearing with respect to the narrow issue of the proposed sewage treatment facility for dredgeate treatment and disposal, this hearing is at the discretion of the Director of Approvals. A public hearing may also be required under Section 30 of the Environmental Protection Act to address issues surrounding the creation of a waste disposal site for dredgeate material on Hamilton Island. However, Ministry officials have indicated to the Committee that a Section 30 hearing is not likely to be required in this case.

Given the potential biophysical impacts of this project and the dangers and future expenses which could arise from the failure to address these concerns adequately before construction begins, the Committee is of the view that an integrated review process with an opportunity for one comprehensive public hearing on all biophysical issues is required.



Adequacy of Public Involvement

The City has proceeded with commendable public openness. From the outset of the planning process the proponent has involved members of the local community and the public at large in an extensive public consultation program. It is the Committee's view that this program closely parallels the public involvement that would be required under a full environmental assessment. However, the public review process required under the Act, which includes an opportunity for a public hearing, would ensure all interested parties can examine closely the documented project plan and impacts, provide input into possible mitigation measures and engage in a full public discussion of outstanding significant environmental concerns. These advantages of the full Environmental Assessment process are not provided for under existing approvals.

Urgency and Delay

The City has argued that delays involved in producing an environmental assessment document and meeting the specific requirements of the Act would adversely affect the momentum of the project, and that the additional expenditures of time and resources involved could lessen the City's commitment to Waterfront Development. It was submitted that reversion to the planning process under the Act, after time and energy have been directed toward the exemption application and the proponent's independent planning process, could result in disillusionment among participants in this process, and a loss of credibility for the Environmental Assessment Act. It is worth re-emphasizing that these arguments are based on problems which could have easily been avoided if the proponent had been directed to focus on the requirements on the full Environmental Assessment process from the beginning. However, based on statements made by the City's representatives, the Committee does not believe that full application of the Act at this time would cause significant damage to either the project or the interests of the proponent and other participants for the following reasons:

- . Producing an environmental assessment document which meets the requirements of the Act would impose little additional work upon the proponent given that it has already undergone extensive public consultation including review of several alternatives and production of environmental impact studies as a result of comments made by public and government reviewers. While additional study will be required some of this work would be needed in any event to meet existing permitting and regulatory requirements.

- . The City has indicated that even with an exemption it would not begin construction before early 1988. Moreover there are unresolved conflicts between the City and the Hamilton Harbour Commissioners regarding the proposed development, dispute over land use planning and zoning issues, and the possibility of a hearing before the Ontario Municipal Board. If an OMB hearing is required, unresolved planning issues and outstanding significant Environmental concerns could be dealt with in a hearing under the Consolidated Hearings Act. Thus, subjecting the project to environmental assessment requirements should not significantly delay the project beyond the time needed to meet other required approvals provided that Ministry decisions do not unduly delay the environmental assessment process.
- . Given the commitment of the City, the waterfront community and all participants in the current planning process, there is little basis to assume that delay would negatively affect the proponent's ability to complete the project.

The Committee agrees with a number of submissions that emphasize the importance of this project as a permanent component of Hamilton's Waterfront, and a precedent for future waterfront remedial action and development. Some delay now, to ensure sound environmental planning, could avoid future problems which are costly and difficult to correct. Given the significance of this project for the City of Hamilton, the Committee is of the view that the time required for proper environmental assessment now would be time well spent.

After reviewing the above criteria, the Committee has reached the following conclusions:

- . given the environmental significance of the project, it is clearly one to which the full environmental assessment process was intended to apply unless exemption is warranted by overriding concerns of urgency or possible damage caused by delays associated with the application of the Act;
- . the Committee does not believe that application of the Act in this case is likely to cause significant delay, or threaten the viability of the project;

- . conditions attached to an exemption order would not ensure the comprehensive review of significant environmental concerns which is necessary in this case; and
- . an exemption for this project would set a bad precedent by encouraging other public sector proponents to undertake a planning process outside the Act in hope of obtaining an exemption.

The Committee therefore concludes that the proposed project fails to meet the requirements for a Section 29 exemption order.

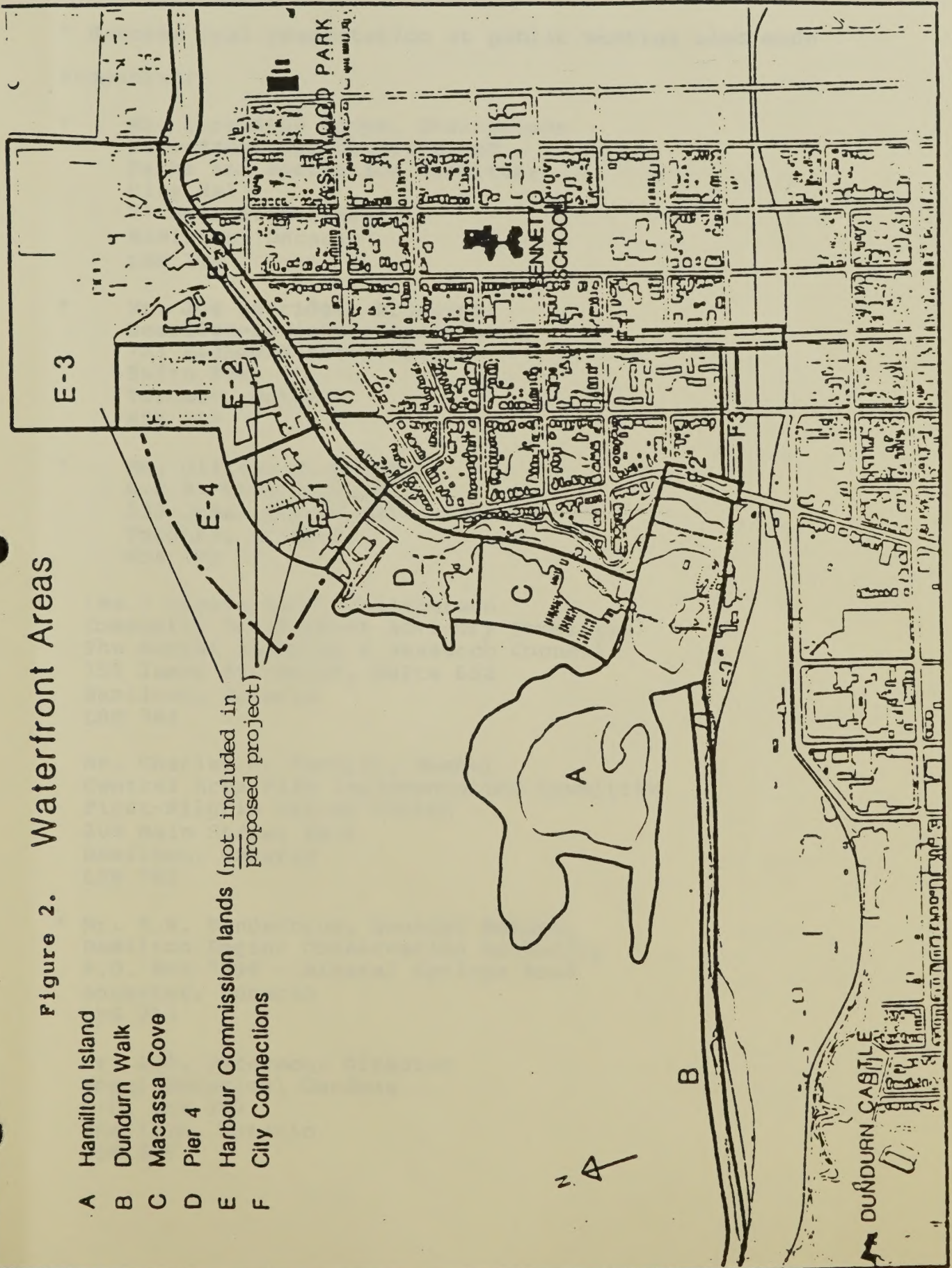
The Committee wishes to emphasize that, while the appropriateness of full environmental assessment should have been clear to both the Ministry and the proponent from the beginning of the planning process, the City has apparently acted in good faith in proceeding by way of a Section 29 exemption. Moreover the City's planning process indicates an apparent concern for environmental planning and an exemplary public consultation process. However, the Committee is of the opinion that it is in the best long term interests of all parties to utilize the comprehensive process provided by the Environmental Assessment Act.

7. Recommendation

The Environmental Assessment Advisory Committee recommends that the Hamilton Waterfront Development Project proposed by the City of Hamilton not be exempt from the Environmental Assessment Act.

Figure 2. Waterfront Areas

- A Hamilton Island
- B Dundurn Walk
- C Macassa Cove
- D Pier 4
- E Harbour Commission lands (not included in proposed project)
- F City Connections



Scale 1:8583

SUBMISSIONS LIST - REPORT 25

Written Submissions

* denotes oral presentation at public meeting also made

Proponent:

* Ms. Geraldine Copps, Chairperson
Waterfront Sub-Committee of
Parks and Recreation Committee
City Hall
71 Main Street West
Hamilton, Ontario
L8N 3T4

* Mr. Joe Berridge, Principal
Berridge-Lewinberg Associates
133 Richmond Street West
Suite 800
Toronto, Ontario
M5H 2L3

* Ms. Gillian M. Booth
B.A.R. Environmental
532 Queen Street East
Toronto, Ontario
M5A 1V2

(Ms.) Glenda Laws, Chairperson
Community Development Advisory Committee
The Social Planning & Research Council
155 James St. South, Suite 602
Hamilton, Ontario
L8P 3A4

Mr. Charles H. Forsyth, Member
Central Area Plan Implementation Committee
First-Pilgrim United Church
200 Main Street East
Hamilton, Ontario
L8N 1H3

* Mr. B.W. Vanderbrug, General Manager
Hamilton Region Conservation Authority
P.O. Box 7099 - Mineral Springs Road
Ancaster, Ontario
L9G 3L3

Mr. A.P. Paterson, Director
Royal Botanical Gardens
P.O. Box 399
Hamilton, Ontario
L8N 3H8

Lawrence A. Pogue
12 Desjardins Ave.
Dundas, Ontario
L9H 4P9

Stewart R. Leslie, President
The Head-of-the-Lake Historical Society
P.O. Box 896
Hamilton, Ontario
L8N 3P6

Mr. R.C. Hodgins, Manager
Environmental Office
Highway Engineering Division
Ministry of Transportation & Communication
1201 Wilson Avenue
Downsview, Ontario
M3M 1J8

Ontario Society for Environmental Management
Environmental Studies Building No.1, Room 108/109
Faculty of Environmental Studies
University of Waterloo
Waterloo, Ontario
N2L 3G1

Mr. John Struger
Hamilton Naturalists Club
P.O. Box 5182
Hamilton, Ontario
L8S 4L3

* Mr. Peter K. O'Hagan
968 Concession Street
Hamilton, Ontario
L8T 1A1

* Ms. Sarah Miller
Canadian Environmental Law Association
243 Queen Street West
4th Floor
Toronto, Ontario
M4S 1Z4

* Mr. Paul Muldoon
225 Cardine Street South
Hamilton, Ontario
L8P 3L5

* Ms. Kathy Renwald
433 Bay Street North
Hamilton, Ontario
L8L 1N3

* Mrs. Gil Simmons
449 Bay Street North
Hamilton, Ontario
L8L 1N2

* Mr. S.M. Makuch
Borden & Elliot
Barristers and Solicitors
250 University Avenue
Toronto, Ontario
M5H 3E9
(Counsel for Hamilton Harbour Commissioners)

K.A. Commodore
100 Ferguson St., Apt. 1810
Hamilton, Ontario
L8N 3Y1

Mr. Robert Wm. Smith
Treasurer
Federation of Environment Groups
Hamilton- Wentworth Area
Hamilton, Ontario

Dr. A.I. Cunningham
Medical Officer of Health
Regional Municipality of Hamilton-Wentworth
P.O. Box 897
Hamilton, Ontario
L8N 3P6

Oral Submissions Only

Ms. Joanna Kidd,
Pollution Probe
12 Madison Avenue
Toronto, Ontario
M5R 2S2

Mr. James Buchanan
359 Upper Ottawa Street
Hamilton, Ontario
L8T 3S5

Ms. Marilyn Bastedo
446 Bay Street North
Hamilton, Ontario
L8L 1N3

Mr. Gerrard Lyons
11 Mount Royal Avenue
Hamilton, Ontario
L8P 4H5

Mr. Ian Bailey
455 Bay Street North
Hamilton, Ontario

Mr. Doug Wolgram
546 James Street North
Hamilton, Ontario
L8L 1J5

Ms. Sharon Lehnert
528 Catharine Street North
Hamilton, Ontario
L8L 4V2

Mr. Paul Foldessy
20 Burlington Street E.
Hamilton, Ontario
L8L 4D2

Mr. Hank Nyhof
469 Bay Street North
Hamilton, Ontario
L8C 1N2

Mr. Peter O'Hagan
968 Concession Street
Hamilton, Ontario
L8T 1A1

Mr. J. H. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario

Mr. ...
100 ...
Hamilton, Ontario



Amberg®

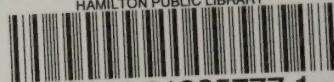
ESSELTE

52506

MADE IN U.S.A.



HAMILTON PUBLIC LIBRARY



3 2022 21335777 1